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In The
Supreme Court of the United States

October Term, 1997

PENNSYLVANIA BOARD OF PROBATION & PAROLE,
Petitioner,

vs.

KEITH M. SCOTT
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF PENNSYLVANIA

BRIEF AMICI CURIAE
OF
AMERICANS FOR
EFFECTIVE LAW ENFORCEMENT, INC.
JOINED BY
THE INTERNATIONAL ASSOCIATION OF
CHIEFS OF POLICE, INC., AND
THE NATIONAL SHERIFFS' ASSOCIATION
IN SUPPORT OF
THE PETITIONER.

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This brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondent. The letters of

consent have been filed with the Clerk of this Court, as required by the Rules.[1]

INTEREST OF *AMICI CURIAE*

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the law enforcement effort more effective, in a constitutional manner. It seeks to improve the operation of the law enforcement and corrections functions to protect our citizens in their life, liberties, and property, within the framework of the various state and federal constitutions.

AELE has previously appeared as *amicus curiae* over 100 times in the Supreme Court of the United States and over 35 times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 16,000 members in 96 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital law enforcement services more effective, while at the same time protecting the rights of all our citizens.

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[1] As required by Rule 37.6 of the United States Supreme Court, the following disclosure is made: This brief was authored for the *amici* by James P. Manak, Esq., counsel of record, and Wayne W. Schmidt, Esq., Executive Director, Americans for Effective Law Enforcement, Inc. No other persons authored this brief. Americans for Effective Law Enforcement, Inc., made the complete monetary contribution to the preparation and submission of this brief, without financial support from any other source, directly or indirectly.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the nation's sheriffs, jail, and corrections administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

Amici are national professional associations representing the interests of law enforcement at the national, state, and local levels. Our members include: (1) law enforcement officers, law enforcement administrators, and correctional administrators who are charged with the responsibility of executing and overseeing the process of arrest and searches within the bounds of the law; and (2) legal advisors who are called upon to advise law enforcement officers, administrators, and correctional administrators in connection with such matters, including the formulation and implementation of policy on the conduct of arrests and searches of probationers and parolees.

Because of the relationship with our members, and the composition of our membership and directors—including active law enforcement administrators and counsel—we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

STATEMENT OF THE CASE

The court below, *Scott v. Pennsylvania Board of Probation & Parole*, 698 A.2d 32 (Pa. 1997), on the basis of prior state precedent, *Commonwealth v. Williams*, 692 A.2d 1031 (Pa. 1997) (a case decided on the basis of the Fourth Amendment), ruled that a parolee who has consented, as a condition of release, to warrantless searches of his person and residence by agents of a parole board nevertheless retains a

limited expectation of privacy against searches conducted without reasonable suspicion that the parolee has committed a parole violation. It held that evidence seized by a police or parole officer in a search that is unreasonable under the *Williams* rule is subject to exclusion if the officer was, or had reason to be, aware of the parolee's status.

SUMMARY OF ARGUMENT

Amici take the position that the Fourth Amendment exclusionary rule does not apply to parole revocation proceedings and that a search of a parolee's residence need not be based on reasonable suspicion to be valid under the Fourth Amendment where the parolee has consented to searches as a condition of his parole.

It is our belief that the rule of the court below is not constitutionally required under established Fourth Amendment precedent pertaining to consent searches. On policy grounds it does serious damage to the societal interest in the effective administration of probation and parole systems, and is not in the best interest of those probationers and parolees who are honestly interested in their personal rehabilitation and return to society as full and productive members.

ARGUMENT

A. EFFECTIVE REHABILITATION OF EX-OFFENDERS WILL BE HAMPERED BY THE RULE OF THE COURT BELOW.

B. THE EXCLUSIONARY RULE IS NOT APPLICABLE IN PROBATION AND PAROLE REVOCATION HEARINGS.

A. Effective rehabilitation of exoffenders cannot be accomplished by infrequent contact between parole officers and parolees. The parole authority must impose strict rules and retain the ability to enforce those rules in an unfettered manner.

- The state has a dual obligation to (a) make every reasonable effort to rehabilitate exoffenders, and (b) to promote public safety in the communities where probationers and parolees are placed or allowed to live.
- To maintain successful rehabilitation programs, states must monitor parolees to insure that they do not abuse drugs or possess weapons. Because of caseload concerns, parole officers must supplement their infrequent contacts with parolees by enforcing strict rules.
- Because exoffenders who are not fully rehabilitated remain immature and untrustworthy, they must remain continually aware of the fact they can be subjected to unannounced and *standardless* searches. Random and standardless searches should be allowed on proof which is less than a reasonable suspicion of misconduct. Certainly, where a probationer or parolee has freely and voluntarily agreed to conditions permitting standardless searches of his person and property, the court's jurisprudence on consent searches should control. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *Ohio v. Robinette*, 117 S. Ct. 417 (1996).

The Fourth Amendment proscribes searches conducted outside the judicial process, but this Court has recognized

exceptions when special needs, beyond the normal need for law enforcement, make the probable cause or reasonable suspicion requirement impractical or unnecessary. *See, e.g., Griffin v. Wisconsin*, 483 U.S. 868 (1987) (search of probationer's home); *New York v. Burger*, 482 U.S. 691 (1987) (search of premises of highly regulated business); *O'Connor v. Ortega*, 480 U.S. 709 (1987) (work-related search of employee's desk); *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (search of student's property by school officials); *Hudson v. Palmer*, 468 U.S. 517 (1984) (search of prisoner's cell).

As noted by this Court in *New Jersey v. T.L.O.*, *supra* at 342, n.8, a case involving suspicionless, administrative searches of students, "where the privacy interests indicated by a search are minimal and other safeguards are available to assure the individual's reasonable expectation of privacy is not 'subject to the discretion of the official in the field,'" exceptions to the requirement of individualized suspicion do not violate the Fourth Amendment. *See also, People v. Parker*, 284 Ill. App. 3d 860, 672 N.E.2d 813, 816, 219 Ill. Dec. 960 (Ill. App. 1 Dist. 1996) ("The Supreme Court has upheld suspicionless, administrative searches which were conducted as part of a general regulatory scheme to ensure public safety, not as a criminal investigation to secure evidence of crime. See *Vernonia School District 47J v. Acton*, ___ U.S. ___, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995) (drug testing of student athletes); *United States v. Martinez-Fuerte*, 428 U.S. 543, 96 S. Ct. 3074, 49 L. Ed. 2d 1116 (1976) (automobile checkpoints looking for illegal immigrants and contraband); *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed 2d 412 (1990) (checkpoints to snare drunk drivers).").

B. The exclusionary rule should not be applied to parole revocation hearings because of conflicting judicial policies. The rule's stated purpose of discouraging standardless searches must give way to the greater purpose of encouraging full

rehabilitation. Extending the exclusionary rule to revocation hearings conflicts with the more important purpose of encouraging rehabilitation.

- It is vital that any drugs or weapons found during these searches be admissible in administrative parole revocation hearings. Parolees must remain aware that if they are found abusing drugs or possessing weapons, evidence or contraband seized from their homes, cars, or persons can and will be used to revoke their conditional release from prison. Some parolees will not "play by the rules" if they know there are no penalties if they are caught.
- The recognition of *any* standard requirement, *no matter how minimal*, impedes the more important goal: the effective rehabilitation of exoffenders. The state has an obligation to help exoffenders become useful, productive and law-abiding members of society. That is the very purpose of "corrections."

Moreover, the state has an overwhelming interest in being able to return a parolee to imprisonment without the burden of meeting the requirements of the exclusionary rule if the parolee has failed to abide by the conditions of parole. *Morrissey v. Brewer*, 408 U.S. 471 (1972). This Court has recognized that the decision to revoke probation or parole is an administrative one; it should be a flexible and informal process that "does not require the full panoply of procedural safeguards associated with a criminal trial." *Black v. Romano*, 471 U.S. 606, 613 (1985).

By injecting Fourth Amendment requirements into what should be a purely administrative decision, the court below has, in effect, converted what should be an informal information-gathering proceeding into an adversarial trial. Instead of what should be a "predictive and discretionary" process, the court below has converted the role of the administrative process into one "more akin to that of a judge at trial, and less attuned to the rehabilitative needs of the individual probationer or parolee." *Gagnon v. Scarpelli*, 411 U.S. 778, 787-88 (1973).

Finally, *amici* note from our particular vantage point that the decision of the court below will, in effect, transform probation and parole agents into law enforcement officers (police), an effect neither desired by nor desirable for the correctional system. These public officials serve the societal interests of rehabilitation of exoffenders and their return to productive membership in mainstream community life.

Application of the exclusionary rule to their activities misconceives their role in the justice system and is, in plain words, bad policy and opposite to the trend away from linking the exclusionary rule to administrative proceedings, *see, e.g., People v. Arron C.*, 1997 WL 763209, 1997 Cal. App. LEXIS 1033 (Cal. App. 1 Dist., Dec. 11, 1997) (No. A076469) (declining to apply the exclusionary rule to a search conducted by probation officers: "[p]robation officers are not 'adjuncts to the law enforcement team,'" quoting *Arizona v. Evans*, 514 U.S. 1, 15 (1995) in reference to court clerks).

CONCLUSION

Amici urge this Court to reverse the decision of the court below on the basis of the precedents of this Court and sound judicial policy.

Respectfully submitted,

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